

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-528

September 8, 1998

UNITEL, INC.  
Request for Exemption from  
Required Approvals of Certain  
Reorganizations Under  
35-A M.R.S.A. § 708

ORDER GRANTING EXEMPTION

WELCH, Chairman; NUGENT, Commissioner

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On July 13, 1998, Unitel, Inc. (Unitel) filed a request for an exemption from the need to obtain approval, otherwise required by 35-A M.R.S.A. § 708(2), for certain reorganizations. On September 4, 1998, Unitel amended its request. Pursuant to 35-A M.R.S.A. § 708(2)(A), the Commission may grant exemptions from the approval requirement of section 708. We grant the exemption as requested.

Unitel is a public utility subject to the jurisdiction of the Commission under Title 35-A M.R.S.A. Unitel is an operating telephone utility, as defined by 35-A M.R.S.A. § 102(19), and is an incumbent local exchange carrier (ILEC). The Commission actively regulates its rates. Unitel is authorized to serve and does provide telephone service in the telephone exchanges of Unity, Albion, Thorndike and Newburgh. Unitel is wholly owned by Unitek, Inc. (Unitek).

Unitel has requested that the Commission grant it an exemption from the approval requirements of Section 708 of Title 35-A for certain transactions that would constitute a "reorganization" under Title 35-A, as described below. As represented in the original (July 13) Request, the requested exemption relates to activities of two of Unitek's stock owners, Bert G. Clifford and Coral B. Clifford (the Cliffords). Each Clifford owns 10% or more of the stock of Unitek. Because Unitek owns 100% of Unitel, both Mr. and Mrs. Clifford are affiliated interests of Unitel as defined by 35-A M.R.S.A. § 707(1).

The Cliffords claim that as individuals they have the opportunity and the right to invest in other activities and business ventures on an ongoing basis. However, because of Section 708, Unitel, as the regulated public utility, must obtain Commission approval if either Mr. or Mrs. Clifford acquires a 10% or more interest in any other company. Unitel claims that the applying the full breadth of the statutory definition of "reorganization" to the investment, business and private

activities of the Cliffords may impose burdens, delays, public disclosure, uncertainties and possible lost business opportunities for the Cliffords. Unitel argues that many of the Cliffords' investment activities do not affect the interests of the utility's ratepayers and shareholder that are intended to be protected by Section 708. Unitel also claims that full application of the statute places a burden on Unitel to monitor the activities of its shareholders and ultimate owners and to ensure that regulatory approvals are obtained.

The amended Request, filed on September 4, 1998, following discussions with Commission staff, requests that the Commission make clear that the exemption will apply equally to all activities by affiliated interests in Unitel, including those of its parent Unitek, Inc. In *UNITEL, INC., Application for Approval of Reorganization Which Will Result in Creation of Parent Corporation*, Docket No. 95-181, Order (Oct. 31, 1995), the Commission granted Unitel an exemption relating to certain activities by Unitek, but it is not identical to the exemption requested in this case, and Unitel desires uniformity.<sup>1</sup>

Unitel argues that the interests of Unitel and its customers and investors, which Section 708 seeks to protect, can be reasonably protected without comprehensive application of Section 708 to all possible activities to which it might apply.

In *UNITY TELEPHONE COMPANY, INC., Petition Seeking Exemption From Approval Requirement for Reorganization (35-A M.R.S.A. § 708) For Affiliated Interests Created or Purchased by Unity Cellular Systems, Inc., Bert G. Clifford and Coral Clifford*, Docket No. 92-111, Order (October 15, 1992), the Commission granted a limited exemption from the reorganization statute for activities by the Cliffords, but only in those cases in which Mr. or Mrs. Clifford "created" or "purchased" an affiliate or an interest in an affiliate, and only if Unitel provided prior notice of one month to the Commission. The exemption in Docket No. 92-111 is narrower in scope than exemptions the Commission has granted more recently to other telephone utilities, and is also more restrictive than the one granted to Unitel itself in Docket No. 95-181 for certain activities by Unitek. None of those exemptions require notice.

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<sup>1</sup>The exemption in Docket No. 95-181 is broader than the one approved in this Order because it does not contain the exception to the exemption described in subparagraph (c) of Ordering Paragraph 2 below. The 95-181 exemption is also narrower, however, in that it exempts only those reorganizations resulting in subsidiaries of the parent corporation that engage in "non-regulated and competitive telecommunications activities."

In the more recent cases involving other ILEC telephone utilities, the Commission has granted exemptions from the section 708 approval requirement, subject to certain major exceptions, for activities by persons or entities with ownership interests in the telephone utility that would constitute reorganizations by the public utility.<sup>2</sup> For those other telephone utilities, the Commission has granted a general exemption from the approval requirement for any "reorganization" except for:

- (a) a restructuring<sup>3</sup> of the telephone utility itself;
- (b) a restructuring of a subsidiary<sup>4</sup> of the telephone utility;
- (c) a restructuring resulting in the creation of an affiliated interest of the telephone utility where it is

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<sup>2</sup>*Northland Telephone Company of Maine, Inc., Request for Exemption for Affiliated Interests of Northland Telephone Company of Maine, Inc. from Reorganization Statute, Section 708, Docket No. 94-207, Order Approving Stipulation (June 21, 1994); Mid-Maine Telecom, Inc., Request for Exemption for Affiliated Interests of Mid-Maine Telecom, Inc. from Reorganization Statute, Section 708, Docket No. 94-206, Order Approving Stipulation (June 21, 1994).*

<sup>3</sup>The term "restructuring" is not contained in 35-A M.R.S.A. § 708. We use the term in this order, as we have in the prior orders mentioned above, to describe a range of activities that is narrower than those included in the statutory term "reorganization." The "reorganization" of a public utility includes "the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination, direct or indirect, in whole or in part, of an *affiliated interest* as defined in section 707...." (emphasis added)

As used in this order, a "restructuring" means the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination of a corporation or entity (including the public utility itself, or a corporation or entity described in subparagraphs (b) and (c) above, or any other affiliated interest) accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of more than ten percent (10%) of the utility's, corporation's or entity's voting securities.

<sup>4</sup>As used in this order, "subsidiary" shall mean any entity 10% or more of the voting securities of which is owned or controlled by another entity, and all successive subsidiaries thereof, *ad infinitum*.

intended that the affiliate will (i) enter into a contract or arrangement to furnish goods to be used by the telephone utility or (ii) perform activities formerly or simultaneously performed by the telephone utility.

Unitel has requested that the Commission grant a similar exemption with regard to Unitel at this time, for activities by Mr. and Mrs. Clifford and for Unitek that are not described in subparagraphs (a),(b) and (c) above.

Unitel has not requested any exemption under 35-A M.R.S.A. § 707, which requires Commission approval of any contracts or arrangements between a public utility and an affiliated interest of the public utility, and has stated that the requested exemption under section 708 will not affect the applicability of section 707. The fact that Unitel must still obtain approval for actual transactions with its affiliates convinces us that the notice requirement ordered in Docket No. 92-111 (for activities by the Cliffords) is not necessary at this time.

For the foregoing reasons, we find that Unitel's requests for exemption are reasonable and we grant them in this order.

Accordingly, we

O R D E R

1. Except as provided in Ordering Paragraph 2 below, all entities which presently or in the future are affiliated interests (as defined in 35-A M.R.S.A. § 707) of Unitel, Inc. shall be exempt from the requirements of 35-A M.R.S.A. § 708 (and similar successor statutes).

2. The following shall remain subject to the Commission approval requirements of 35-A M.R.S.A. § 708(2):

- (a) a restructuring of Unitel, Inc.;
- (b) a restructuring of a subsidiary of Unitel, Inc.;
- (c) a restructuring resulting in the creation of an affiliated interest of Unitel, Inc. where it is intended that the affiliate will (i) enter into a contract or arrangement to furnish goods to be used by Unitel, Inc. or (ii) perform activities formerly or simultaneously performed by Unitel, Inc.

3. The exemption created by Ordering Paragraph 1 shall be subject to prospective termination or limitation upon Commission

Order for violations of the terms or conditions of this order or for other good cause after notice and hearing to Petitioners.

4. The limited exemption created by Ordering Paragraph 1 applies only to the requirement of 35-A M.R.S.A. § 708(2) that the Commission approve reorganizations. The exemption does not apply to the approval requirements of 35-A M.R.S.A. § 707(3) that requires Unitel, Inc. to obtain Commission approval to extend or receive credit or the make or receive a loan to or from an affiliated interest or to make any contract or arrangement for the furnishing of management, supervision or construction, engineering, accounting, legal, financial or similar services, or to furnish any service or real or personal property other than those enumerated in 35-A M.R.S.A. § 707(3) with any affiliated interest; or to any other provision of Title 35-A. The Commission retains its powers under 35-A M.R.S.A. § 707(2) to inspect books, accounts and records of Unitel, Inc. or of an affiliated interest that relates, directly or indirectly, to transactions between Unitel, Inc. and an affiliated interest.

5. Unitel, Inc. shall ensure that no restructurings undertaken by it or any of its subsidiaries individually or in aggregate, shall materially impair the ability of Unitel, Inc. to attract capital on reasonable terms.

6. As a condition of the granting of the exemption in Ordering Paragraph 1, Unitek, Inc., shall not take any action pursuant to the exemption that materially impairs the ability of Unitel, Inc. to attract capital on reasonable terms.

7. As a condition of the granting of the exemption in Ordering Paragraph 1, Bert Clifford and Coral Clifford shall not take any action pursuant to the exemption that materially impairs the ability of Unitel, Inc. to attract capital on reasonable terms.

8. This order supersedes the exemptions granted by the Commission in *UNITY TELEPHONE COMPANY, INC., Petition Seeking Exemption From Approval Requirement for Reorganizations (35-A M.R.S.A. § 708) For Affiliated Interests Created or Purchased by Unity Cellular Systems, Inc., Bert G. Clifford and Coral Clifford*, Docket No. 92-111, Order (October 15, 1992) and in *UNITEL, INC., Re: Application for Approval of Reorganization Which Will Result in Creation of Parent Corporation*, Docket No. 95-181, Order (Oct. 31, 1995).

9. As used in these ordering paragraphs, "restructuring" has the meaning stated in footnote 3 , and "subsidiary" has the meaning stated in footnote 4.

Dated at Augusta, Maine this 8th day of September, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.